

THE ROSEN LAW FIRM, P.A.

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DOUGLAS LABARE, DERIVATIVELY
AND ON BEHALF OF OCEAN POWER
TECHNOLOGIES, INC.,

Plaintiff,

vs.

CHARLES DUNLEAVY, MARK A.
FEATHERSTONE, TERENCE J. CRYAN,
DR. GEORGE W. TAYLOR, EILEEN M.
COMPETTI, DAVID L. KELLER, GEORGE
H. KIRBY III, DEAN J. GLOVER, AND
SEYMOUR S. PRESTON III,

Defendants,

And

OCEAN POWER TECHNOLOGIES,
INC.,

Nominal Defendant.

Civil Action No. 15-cv-1980 (FLW) (LHG)

(Consolidated with 15-CV-5469)

JOSEPH LACALAMITO, Derivatively on
Behalf of Nominal Defendant OCEAN
POWER TECHNOLOGIES, INC.,

Plaintiff,

v.

CHARLES DUNLEAVY, MARK A.
FEATHERSTONE, TERENCE J. CRYAN,
DR. GEORGE W. TAYLOR, EILEEN M.
COMPETTI, DAVID L. KELLER, GEORGE
H. KIRBY III, DEAN J. GLOVER,
SEYMOUR S. PRESTON, III, BRUCE A.
PEACOCK, and DAVID L. DAVIS,

Defendants,

-and-

OCEAN POWER TECHNOLOGIES, INC.,

Nominal Defendant.

ANGELO PUCILLO, Derivatively on Behalf
of OCEAN POWER, INC.,

Plaintiff,

v.

CHARLES DUNLEAVY, MARK A.
FEATHERSTON, TERENCE J. CRYAN,
GEORGE W. TAYLOR, EILEEN M.
COMPETTI, DAVID L. KELLER, GEORGE
H. KIRBY III, DEAN J. GLOVER, AND
SEYMOUR PRESTON

Defendants,

-and-

OCEAN POWER TECHNOLOGIES, INC., a
Delaware corporation,

Nominal Defendant.

Civil Action No. 16-cv-02249 (PGS) (LHG)

Civil Action No. 16-cv-03309 (BRM) (LHG)

**STIPULATION AND [PROPOSED] ORDER CONSOLIDATING RELATED ACTIONS
SUBSTITUTING LEAD PLAINTIFF, AND STAYING ACTIONS**

WHEREAS, on March 18, 2015, plaintiff Douglas Labare (“Labare”) filed a verified shareholder’s derivative complaint, derivatively and on behalf of Ocean Power Technologies, Inc. (“Ocean Power”) as a nominal defendant, against defendants Charles Dunleavy, Mark A. Featherstone, Terence J. Cryan, Dr. George W. Taylor, Eileen M. Competti, David L. Keller, George H. Kirby III, Dean J. Glover, and Seymour S. Preston III (collectively and together with Ocean Power, “Defendants”), asserting claims of breach of fiduciary duty, abuse of control, gross mismanagement, and unjust enrichment (“Labare Action”); and

WHEREAS, by order dated May 18, 2015, the Court stayed the Labare Action pending: (1) the entry of an order denying any pending motions to dismiss in a consolidated putative class action alleging that defendants Ocean Power and Dunleavy violated the federal securities laws that was filed in this Court and captioned *In Re Ocean Power Technologies, Inc. Securities Litigation*, No. 1:14-3799 (FLW) (LHG) (the “Securities Class Action”); (ii) the commencement of discovery in the Securities Class Action; (iii) a joint request by plaintiff Labare and Defendants to lift the stay; or (iv) further order of the Court; and

WHEREAS, on July 10, 2015, Plaintiff Jarrod L. Rywolt (“Rywolt”) filed a substantially similar verified shareholder’s derivative complaint against Defendants asserting the same claims as the Labare Action (“Rywolt Action”); and

WHEREAS, by order dated February 8, 2016, the Court consolidated the Labare Action and Rywolt Action (the “Consolidated Action”), appointed Plaintiffs Labare and Rywolt as co-lead plaintiffs in the Consolidated Action, appointed The Rosen Law Firm, P.A. as lead counsel in the Consolidated Action, ordered Plaintiffs Labare and Rywolt to file a consolidated amended complaint within thirty days, and dismissed the Rywolt Action; and

WHEREAS, on March 9, 2016, Plaintiffs Labare and Rywolt filed a consolidated verified shareholder derivative complaint for: (1) breach of fiduciary duty; (2) abuse of control; (3) gross mismanagement; and (4) unjust enrichment (the “Consolidated Amended Complaint”) (Dkt. No. 13); and

WHEREAS, on April 21, 2016, Plaintiff Joseph LaCalamito (“LaCalamito”) filed in this Court a substantially similar verified shareholder’s derivative complaint against the Defendants and Bruce A. Peacock (“Peacock”), and David L. Davis (“Davis”) asserting a claim for breach of fiduciary duty (the “LaCalamito Action”); and

WHEREAS, on June 8, 2016, Plaintiff Angelo Pucillo (“Pucillo”) filed in this Court a substantially similar verified shareholder’s derivative complaint against the Defendants asserting claims for breach of fiduciary duty, abuse of control, and unjust enrichment (“Pucillo Action”); and

WHEREAS, on August 3, 2016, the Court entered a stipulated order, among other things, staying the Pucillo Action pending a motion to consolidate; and

WHEREAS, on August 24, 2016, the Court entered an order staying the Consolidated Action pending the settlement hearing scheduled for November 14, 2016 in the Securities Class Action; and

WHEREAS, the Plaintiffs and Defendants in the Consolidated Action, the LaCalamito Action, and the Pucillo Action (collectively, the “Actions”) desire to consolidate the Actions; and

WHEREAS, Plaintiffs also desire to substitute plaintiff Pucillo for plaintiffs Labare and Rywolt as lead plaintiff to ensure this Court’s diversity jurisdiction, and Defendants do not oppose this request; and

NOW THEREFORE, THE PARTIES HERETO DO HEREBY STIPULATE AND AGREE THAT:

1. The Actions involve common questions of law or fact, and consolidation of the Actions would avoid unnecessary costs or delay and would assure consistent rulings and decisions. Therefore, pursuant to Federal Rule of Civil Procedure 42, plaintiffs Labare, Rywolt, LaCalamito, and Pucillo ("Plaintiffs") and Defendants (collectively, the "Parties") agree that the Actions should be consolidated for all purposes. Hereinafter, papers need only be filed in the Consolidated Action, Civil Action No. 15-cv-1980 (FLW) (LHG). This Order shall govern and control the procedure for the litigation of each of the Actions and all related cases that may be filed in or transferred to this Court.

2. Plaintiff Pucillo replaces and substitutes plaintiffs Labare and Rywolt as lead plaintiff in the Consolidated Action.

3. The Consolidated Amended Complaint shall remain designated as the operative complaint in the Consolidated Action. Davis and Peacock, who were named in the complaint in the LaCalamito Action but never served with process and who are not named as defendants in the Consolidated Amended Complaint, shall not be defendants in the Consolidated Action.

4. The Rosen Law Firm, P.A. shall continue to serve as Lead Counsel in the Consolidated Action and all other related actions that have been filed in or transferred to this Court.

5. The Actions shall be stayed pending the settlement hearing scheduled for November 14, 2016 in the Securities Class Action and further order of the Court.

Date: October 18, 2016

Respectfully submitted,

By: /s/Laurence M. Rosen

Laurence M. Rosen

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SO ORDERED: *Freida L. Wolfson*
Hon. Freda L. Wolfson, U.S.D.J.

10/25/16